Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
2002 Biennial Regulatory Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996	)	MB Docket No. 02-277
	)	
Cross Ownership of Broadcast Stations and Newspapers	)	MM Docket No. 01-235
	)	
Rules and Policies Concerning Multiple Ownership of Radio Broadcast Stations in Local Markets	)	MM Docket No. 01-317
	)	
Definition of Local Markets	)	MM Docket No. 00-244

COMMENTS OF ARSO RADIO CORPORATION

Arso Radio Corporation ("Arso")[1] submits these comments in response to the Commission's *Notice of Proposed Rulemaking*[2] to consider, inter alia, revisions to its newspaper/broadcast cross-ownership rule. As provided in the *Notice*, Arso's previously filed comments in MM Docket 01-235 should be incorporated into this proceeding. In addition, Arso files these additional comments to issues that were raised for the first time in the *Notice*, and to address recent developments that further support Arso's position. For the reasons set forth below, Arso supports retention of the rule along with minor modification to expand the rule to non-English language newspapers in communities where English is not the dominant language.

The newspaper/broadcast cross-ownership rule prohibits common ownership of a full-service broadcast station and a daily newspaper when the broadcast station's service contour encompasses the newspaper's city of publication.[3] However, note 6 to the rule, in defining a daily newspaper, limited it to one that is published in the English language. While this is an appropriate standard for much of the United States, where English is the dominant language, there are communities, such as Puerto Rico, where Spanish is the dominant language (and the official

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[1] Arso is an FCC licensee of broadcasting facilities located in Puerto Rico.

[2] *Notice of Proposed Rulemaking* in MB Docket No. 02-277, MM Dockets No. 01-235, 01-317 and 00-244, FCC 02-249 (rel. September 23, 2002)("*Notice*")

[3] 47 C.F.R. § 73.3555(d). For AM radio stations, the service contour is the 2mV/m contour, *id*. § 73.3555(d)(1); for FM radio stations, the service contour is the 1mV/m contour, *id*. § 73.3555(d)(2); for TV stations, the service contour is the Grade A contour, *id*. § 73.3555(d)(3). A daily newspaper is defined to be one that is published in the English language four or more times per week. *Id*. § 73.3555 n.6.

language of the Commonwealth) and daily Spanish language newspapers are the dominant newspapers, while English language newspapers are in the minority. Since, according to the Commission, "[t]he multiple ownership rules," such as the newspaper/broadcast cross-ownership rule, "rest on two foundations: the twin goals of diversity of viewpoints and economic competition."[4], elimination of the caveat for English language newspapers in communities where the Spanish language predominates would foster those twin goals. The Commission largely based the newspaper/broadcast cross-ownership rule in particular on the diversity goal, explaining that "it is essential to a democracy that its electorate be informed and have access to divergent viewpoints on controversial issues."[5]

An example of how the current rule's intent is mooted in non-English dominant communities is the Puerto Rico media market, where Spanish is the dominant language. *El Nuevo Dia* (printed in Spanish) is the largest circulation newspaper in San Juan in any language with circulation in excess of 200,000, not including its downtown tabloid, *Primera Hora*, (also a Spanish language daily), which has another 116,000 in circulation[6], and it dominates the newspaper market both in San Juan and throughout the island. Indeed, *El Nuevo Dia* is the largest daily newspaper in the United States, with daily page count averaging 196 pages.[7] It has approximately 72% of all newspaper advertising revenue[8] in Puerto Rico and over 80% of the Spanish language advertising market, representing over 4.8 million column inches of advertising annually.[9] *El Nuevo Dia* and its affiliate papers are the most significant newspaper in San Juan and the entire island. As noted above, it has significant economic clout on the island and commands hefty advertising rates.[10] Nevertheless, under the current interpretation of the rule and note 6, such a combination could seek approval since the newspapers are not published in English, and indeed the principals of *El Nuevo Dia* have sought Commission approval for acquisition of a broadcasting license, which is currently pending with the Media Bureau[11].

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[4] *Second Report and Order*, 50 FCC 2d at 1074.

[5] *Id*.

[6] Editor and Publisher Online - Tuesday, December 5, 2000
available at <http://www.mediainfo.com/ephome/news/newshtm/stories/120500n8.htm>

[7] Goss Graphic Systems Press Release, September 15, 2000
available at <http://www.gossgraphic.com/pg/press/elnuevo.htm>

[8] MediaFax, Inc. AdTrac Media Analysis Comparison Report, January 2000-December 2000 – Adtrac estimates *that El Nuevo Dia* and *Primera Hora's* approximate combined revenue from advertising to be in excess of $315 Million dollars for calendar year 2000. Total Newspaper revenues for Puerto Rico in 2000 were estimated by Mediafax, Inc. to be approximately $437 Million dollars, while total Radio advertising revenues were estimated to be approximately $115 Million dollars.

[9] *El Vocero*, April 9, 2001

[10] See "Puerto Rican paper settles free-press suit against government" Associated Press May 11, 1999 available at <http://www.freedomforum.org/templates/document.asp?documentID=7319>

[11] See File No. BAL-20010302AAF.

The new area of inquiry raised by the *Notice* is the effect of the rule on competition. One of the Commission's responsibilities is to determine whether the cross-ownership rule is "necessary in the public interest as a result of competition".

The relevant marketplace where the two industries compete is in advertising dollars. In the specific market in which Arso has first hand experience, there are several factors which relate to this issue: First, broadcasters in the Puerto Rico market, as a rule, pay a much higher commission to advertising agencies for placement of advertising than in the continental United States. This, in turn, means lower net revenues for broadcasters than in other markets. Secondly, there is a gross disparity in the Puerto Rico advertising market between the dollars spent on television and radio advertising and those spent on newspaper advertising. For example:

- The combined estimated gross revenue for the year 2000 for all radio stations licensed to Puerto Rico was $114,900.00.[12]

- The combined estimated gross revenue for the year 2000 for all television stations licensed to Puerto Rico was $170,800.00.[13]

- The revenue from advertising in Puerto Rico's daily newspapers during the year 2000 was $437,728,117.00. Of this sum, the two dominant Spanish daily papers, *El Nuevo Dia* and *Primera Hora*, were responsible for $315,264,262.00 of advertising revenue, or more than 72% of the total newspaper revenue.[14]

In this particular market, the overwhelming influence of the two dominant newspapers, whose revenues alone exceed the combined ***totals*** of all radio and television stations in the market, suggest that the competitive benefits of consolidation (*e.g.*, economies of scale and scope that may lead to lower costs and prices or superior products) is far outweighed by the potential harms (*e.g.*, the exercise of market power by the dominant newspapers). It is not unrealistic to expect a newspaper/broadcast combination to offer packages to its advertisers at rates that would further diminish advertising expenditures amongst other broadcasters and even other newspapers. This exercise of market power would translate into fewer revenues for the other media voices in the relevant market, leading in time to the demise or consolidation of some of those voices and ultimately to less diversity of viewpoint in the marketplace. Furthermore, potential monopolistic and anti-trust practices could develop, overtly or covertly, through the exercise of this market power. An example of these potential monopolistic tendencies is illustrated by allegations contained in a complaint filed September 16, 2002 in U.S. District Court in and for the District of Puerto Rico under Case No. 02-2400 (SEC) styled *Ramallo Bros. Printing, Inc. v. El Dia, Inc., Editorial Primera Hora, Inc. and Advanced Graphic Printing, Inc*. The complaint alleges antitrust violations against the aforementioned dominant newspapers (collectively "El Dia") and its printing subsidiary ("AGP"). The lawsuit alleges that El Dia formed AGP for the purpose of printing commercial supplements that are distributed with newspapers in Puerto Rico, and that El

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[12] BIA Research, Inc., *Investing in Radio 2001* (1st ed. 2001)

[13] BIA Research, Inc., *Investing in Television 2001* (1st ed. 2000) (these include network, national/regional and local revenues.

[14] MediaFax, Inc. AdTrac Media Analysis Comparison Report, January 2000-December 2000

Dia has attempted to monopolize the commercial supplements printing market by (1) having AGP discount the cost of the commercial supplement printing services to below market cost in an effort to leverage AGP into the printing business and (2) after acquiring other printers' customers through these discounts, using its market dominance to require all commercial supplements to be distributed with its newspapers to be printed by AGP; and (3) inducing other printers' employees to leave their employment to work for AGP and disclose trade secrets. The Plaintiff seeks relief under the Sherman Act, the Clayton Act, the Pick-Barth Doctrine and the anti-trust laws of the Commonwealth of Puerto Rico.

It is ***exactly*** this scenario that Arso predicted when it filed its comments in MM Docket No. 01-235, (which pre-date the filing of the above litigation) suggesting that El Dia's acquisition of a broadcast station could lead to monopolistic practices, such as requiring its newspaper advertisers, as a condition to continued newspaper access for their ads, to either advertise on its broadcast station or ***not*** advertise on the competing broadcast stations. Given the market dominance of this particular newspaper company, as set forth above, the economic clout it wields, and the allegations of similar activity in the printing industry as referenced in the lawsuit attached hereto, it should be fairly apparent that, at least in the Puerto Rico market, retention of the newspaper/broadcast crossownership rule is not only necessary, but should be expanded by revising note 6 concerning non-English language newspapers.

CONCLUSION

Puerto Rico is unique in that it features a robust newspaper industry, dominated by the two newspapers referenced above, but also featuring several other significant newspapers, though only one is in the English language (the *San Juan Star*). Thus, while in other areas of the United States daily newspapers have declined since enactment of the cross-ownership rule, in Puerto Rico, the respective newspaper and broadcasting industries remain relatively similar to the circumstances in which the rule was originally enacted.

In conclusion, Arso believes the rule in its current form remains necessary to protect the twin goals enunciated by the Commission when the rule was first enacted, and that, in deference to the unique market in Puerto Rico (and perhaps other U.S. markets) where Spanish is the dominant language, the definition in note 6 to the rule be revised to delete the reference to English language newspapers in markets where English is not the dominant language.

RESPECTFULLY SUBMITTED,
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